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CRL OP No. 4745 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-03-2026

CORAM

THE HONOURABLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL OP No. 4745 of 2023

AND

CRL MP NO. 2994 OF 2023, CRL MP NO. 2995 OF 2023

1. C.N.S Ilavarasan
S/o. Late C.N. Sadhasivan, F2, 1st
Floor, M.M. Avenue, Komalavailli
Apartment, Deivasigamani Nagar,
Kancheepuram.

Petitioner(s)

Vs

1. S.Pandian
S/o. Late C.N.Sadasivan, No.6, R.V.
Selvalakshmi Nagar, Kasim Nagar,
Kancheepuram.

Respondent(s)

CRL MP No. 2994 of 2023

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Respondent(s)

CRL MP No. 2995 of 2023

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Floor, M.M. Avenue, Komalavailli
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Respondent(s)

CRL OP No. 4745 of 2023

PRAYER

To call for the records in CC.No.47/2022 on the file of the Judicial Magistrate No.I, Kancheepuram and quash the proceeding in so far as the petitioner / 1st Accused is concerned and thus render justice.

CRL MP No. 2994 of 2023

PRAYER

To stay all the proceedings before the court below in CC.No.47/2022, on the file of the Judicial Magistrate No.1, Kancheepuram, till the disposal of the main petition.

CRL MP No. 2995 of 2023

PRAYER

To dispense with the presence of the Petitioner / 1st Accused before the court below in CC.No.47/2022, on the file of the Judicial Magistrate No.1, Kancheepuram, till the disposal of the main petition.

CRL OP No. 4745 of 2023

For Petitioner(s): Mr.K. Srinivasan, Senior counsel
for M/s.C.R.Malarvannan
T.Vijayakumar
O.G.Dhilip Roshan
List Of Citations Filed

For Respondent(s): R.Mubarak Basha
For The Respondent

**ORDER**

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The petitioner has filed the present petition to call for the records in CC.No.47 of 2022 on the file of the Judicial Magistrate No.1, Kancheepuram. The petitioner is arrayed as first accused . The respondent lodged a complaint against the petitioner/first accused who is his brother and the second accused who is the son of the first accused. While being so the father of the first accused/C.N.Sadasivam who is aged about 84 years old had executed a settlement deed in favour of the second accused/MadhanKumar in respect of the property situated at Door No.7/2 Subbarayan Street, Kanchipuram vide settlement deed dated 01.12.1999. After execution of the settlement deed, the father of the first accused has filed a suit in O.S.No.79 of 2002 on the file of the Sub court- Kancheepuram for declaring the settlement deed dated 01.12.1999 as null and void and also seeking injunction restraining the petitioner from alienating or otherwise encumbering the plaint schedule property in favour of any third party.

2. While pending suit the father of the first accused/C.N.Sadasivam cancelled the settlement deed 01.12.1999 executed in favour of the second accused vide cancellation deed dated 07.03.2002. Thereafter, another settlement deed was executed on 24.07.2014 and the subject property was transferred in favour of the respondent. While being so on 29.06.2015 the petitioner along



with all the accused persons ran-sacked the house with JCB, Bull dozer and men with crow-bars and completely dismantled the walls and the roof of the tiled house and the tiled house was erased to the ground. It is also alleged that the accused persons stolen Rs.2,00,000/- cash, 15 soverigns of jewels, dining table, fans and other household materials, utensils, Fridge Window A/c (1.5) ton etc. were completed removed and loaded to the goods lorry. At this juncture the settlor/father of the first accused is living in the respondent/complainant house which is situated in No.6, R.V.Selvalakshmi Nagar, Kasim Nagar, Kancheepuram. Therefore, the respondent lodged a complaint before the Inspector of Police, Siva Kanchi police station. After registration of the F.I.R it was closed as mistake of fact by the referred charge sheet. Thereafter, the respondent filed a private complaint and the same was taken cognizance under sections 448,427 and 379 of I.P.C and issued summons to the accused.

3. The learned senior counsel appearing for the petitioner submitted that after closing the F.I.R as mistake of fact it was duly accepted by the Magistrate. Thereafter, without filing any protest petition the respondent herein filed a private complaint. The occurrence took place on 29.06.2015 and the private complaint was lodged only on 12.09.2019, that apart the offence has taken cognizance only on 31.03.2022. Therefore, there was a huge delay and the same was not explained properly. Pending Trial the suit filed by the complainant was dismissed by the Principal Subordinate Court at



Kancheepuram on 10.11.2025. However, so far they have not filed any appeal. Therefore, the entire proceedings can be quashed. Hence, prays to allow this petition.

4. *Per Contra* the learned counsel appearing for the respondent submitted that the police closed the F.I.R as mistake of fact and the same was duly accepted by the learned Magistrate. He further submitted that the complaint can be very well maintainable and to substantiate the said contention he relied on the Judgment reported in ***(2023) 14 Supreme Court cases 576; 2023 SCC Online SC1082 in the case of Zunaid Vs State of Uttar Pradesh and Others.*** He further submitted that the occurrence has taken place on 29.06.2015 and the private complaint was lodged on 12.09.2019 and thereafter the cognizance was taken on 31.03.2022. Hence, the complaint is very well maintainable and the victim cannot be suffered for the delay in taking cognizance by the Trial Court. In support of the said contention he also relied on the Judgment passed by this Court in ***(2014) 2 Supreme Court cases 62: (2014) 1 SCC (Cri) 721; 2013 Scc Online Sc 1043 in the case of Sarah Mathew Vs Institute of Cardio Vascular Diseases by its Director Dr.K.M. Cherian and others.***

5. Heard both sides and perused the materials available on record.



6. The respondent is none other than the brother of the first accused/petitioner and the subject property is owned by their father who settled the subject property in favour of the second accused by the settlement deed dated 01.12.1999. However, after execution of the settlement deed the father of the first accused/C.N.Sadasivam filed a suit in O.S.No.79 of 2002 on the file of the learned Principal subordinate Judge, Kancheepuram for declaring the settlement deed executed in favour of the second accused as null and void and also for an injunction restraining the petitioner to alienate from the subject property.

7. While pending suit the father of the first accused/C.N.Sadasivam had executed a cancellation deed on 07.03.2002 to nullify the settlement deed dated 01.12.1999 executed in favour of the second accused. After cancellation his father executed another settlement deed in favour of the respondent on 24.07.2014. When the suit was pending, the settlor cancelled the settlement deed and had executed another settlement deed in favour of the petitioner herein. Thereafter, on 29.06.2015 the alleged occurrence took place that all the accused persons ran-sacked the house with JCB, Bull dozer and men with crow-bars and completely dismantled the walls and the roof of the tiled house and the tiled house was erased to the ground. It is also alleged that the accused persons stolen Rs.2,00,000/- cash, 15 soverigns of jewels, dining table, fans and other



household materials, utensils, Fridge Window A/c (1.5) ton etc. were completed removed and loaded to the goods lorry. Therefore, the respondent lodged a complaint before the Inspector of Police, Siva Kanchi police station in Crime No.899 of 2015 under Sections 448,427 and 379 of IPC.

8. On a perusal of the FIR it reveals that the complaint was lodged on 03.07.2015 for the occurrence took place on 29.06.2015. There is no explanation for the delay in lodging the F.I.R. Thereafter, the Inspector of Police closed the F.I.R as mistake of fact.

9. On a perusal of the Closure report in Crime No.899 of 2015 reveals that it was closed on the ground of limitation and also the complaint was pending for three years without any progress which was duly accepted by the Judicial Magistrate Kancheepuram. The closure report was filed on 01.11.2018 and the same was duly served to the respondent. However, on receipt of the referred charge sheet the respondent did not file any protest petition. Thereafter, on 12.09.2019 the respondent filed a private complaint for the very same set of allegations before the Judicial Magistrate, Kancheepuram and the same has taken cognizance by the Trial court for the offence under sections 448,427 and 379 of IPC. Though the learned Magistrate subsequently raised the ground that the complaint itself is barred by limitation the learned counsel relied on the Judgment reported in *(2014) 2 Supreme Court cases 62: (2014) 1 SCC (Cri)*



721; 2013 Sc Online Sc 1043 in the case of Sarah Mathew Vs Institute of Cardio Vascular Diseases by its Director Dr.K.M. Cherian and others and the

relevant portion is extracted hereunder:

37. *We are inclined to take this view also because there has to be some amount of certainty or definites in matters of limitation relating to criminal offences. If, as stated by this Court, taking cognizance is application of mind by the Magistrate to the suspected offence, the subjective element comes in. Whether a Magistrate has taken cognizance or not will depend on facts and circumstances of each case. A diligent complainant or the prosecuting agency which promptly filed the complaint or initiates prosecution would be severely prejudiced if it is held that the relevant point for computing limitation would be the date on which the Magistrate takes cognizance. The complainant or the prosecuting agency would be entirely left at the mercy of the Magistrate, who may take cognizance after the limitation period because of several reasons; systemic or other wise. It cannot be the intention of the legislature to throw a diligent complainant out of the Court in this manner. Besides, it must be noted that the complainant approaches the Court for redressal of his grievance. He wants action to be taken against the perpetrators of crime. The Courts functioning under the criminal justice system are created for this purpose. It would be unreasonable to take a view that delay caused by the Court in taking cognizance of a case would deny justice to a diligent complainant. Such an interpretation of Section 468 of CRPc would be unsustainable and would render it unconstitutional. It is well settled that a Court of law would omterpret a provision which would held sustaining the validity of the law by applying the doctrine of reasonable construction rather than supplying a doctrine which would make the provision unsustainable and ultra view the constitution. (U.P. Power Corpn Ltd Vs Abodhya Prasad Mishra)*

38. *The conclusion reached by us is reinforced by the fact that the Law commission in Para 24.20 of its Forty-Second Report, Which we have quoted herein above, referred to Dau Daya) where the three-Judge Bench of this Court was dealing with a Special Act I.e the Merchandise Marks Act, 1889. Section 15 of the Merchandise Marks Act, 1889 stated that no prosecution shall be commenced after expiration of one year after the discovery of the offence by the prosecution. The contention of the appellant was that the offence was discovered on 26.04.1954 when he was arrested and that in consequence, the issue of process on 22.7.1955, was beyond the period of one year provided under Section 15 of the Merchandise Marks Act, 1889 and that the proceedings should therefore be quashed as barred by limitation. While repelling this contention, the three Judges Bench of this Court observed as under: (AIR p. 435, para 6)*

“ 6. It will be noticed that the complainant is required to resort to the Court within one year of the discovery of the offence if he is to have the benefit of proceedings under the Act. That means that if the requirements of Section 15 are satisfied. The period of limitation, it should be remembered,



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is intended to operate against the complainant and to ensure diligence on his part in prosecuting his rights and not against the Court. Now it will defeat the object of the enactment and deprive traders of the protection which the law intended to give them, if we were to hold that unless process is issued on their complaint within one year of the discovery of the offence, it would be thrown out. It will be an unfortunate state of the law if the trader whose rights had been infringed and who takes up the matter promptly before the Criminal court is, nevertheless, denied redress owing to the delay in the issue of process which occurs in Court.”

Though this court was not concerned with the meaning of the term “taking cognizance”, it did not accept the submission that limitation could be made dependent on the act of the Magistrate of issuing process. It held that if the complaint was filed within the stipulated period of one year, that satisfied the requirement. The complaint could not be thrown out because of the Magistrate’s act of issuing process after one year.

*39. As we have already noted in reaching this conclusion, light can be drawn from legal maxims. Legal maxims are referred to in *Bharat Kale*, *Japani Sahoo* and *Vanka Radhamanohari*. The object of the Criminal law is to punish perpetrators of crime. This is in tune with the well-known legal maxim *nullum tempus aut locus occurrit regi*, which means that a crime never dies. At the same time, it is also the policy of law to assist the vigiland and not the sleepy. This is expressed in the Latin Maxim *Vigilantibus et non dormientibus, jura subveniunt*. Chapter XXXVI Crpc which provides limitation period for certain types of offences for which lesser sentence is provided draws support from this maxim. But, even certain offences such as Section 384 or 465 IPC, which have lesser punishment may have serious social consequences. The provision is, therefore, made for condonation of delay. Treating date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 of the Code is supported by the legal maxim *actus curiae neminem gravabit* which means that the act of Court shall prejudice no man. It hears repetition to state that the Court’s inaction in taking cognizance i.e Court’s inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter XXXVI thus presents the interplay of these three legal maxims. The provisions of this Chapter, however, are not interpreted solely on the basis of these maxims. They only serve as guiding principles.*

10. Therefore, the delay in taking cognizance cannot be nullified in the entire case of prosecution. Insofar as the police complaint is concerned even after filing the closure report without filing any protest petition the complainant can file a police complaint. In this connection the learned senior counsel relied on the Judgment reported in ***(2023) 14 SCC Cases 576 in the case of Zunaid Vs State of Uttar Pradesh and others*** and the relevant portion is extracted



10. In view of the above, there remains no shadow of doubt that on receipt for the police report under Section 173 of Crpc, the Magistrate can exercise three options. Firstly he may decide that there is no sufficient ground for proceedings further and drop action. Secondly, he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; and thirdly, he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200.

11 It may be noted that even in a case where the final report of the police under Section 173 is accepted and the accused persons are discharged, the Magistrate has the power to take cognizance of the offence on a complaint or a protest petition on the same or similar offence on a complaint or a protest petition on the same or similar allegations even after the acceptance of the final report. As held by the court in gopal vijay verma vs Bhuneshwar Prasad Sinha, as followed in B. Chandrika vs V. Santhosh, a Magistrate is not debarred from taking cognizance of a complaint merely on the ground that earlier he had declined to take cognizance of the police report. No doubt a Magistrate while exercising his judicial discretion has to apply his mind to the contents of the protest petition or the complaint as the case may be.

11. In view of the above it is made clear that even after the closure report the learned Magistrate can very well entertain the private complaint for the very same offence. Therefore, the learned Magistrate has entertained the private



complainant and taken cognizance. Insofar as the sustainability of the complaint is concerned as per the settlement deed dated 01.12.1999, the possession of the subject property was owned by the second accused. Even on the date of alleged occurrence i.e on 29.06.2015 the respondent and the father of the first accused were residing in No.6, R.V.Selvalakshmi Nagar, Kasim Nagar, Kancheepuram. Therefore, they are not in possession of the subject property and no belongings are there in the subject property. Therefore, after execution of the settlement deed in favour of the second accused the entire possession was handed over to the second accused. In fact the Trial Court has taken cognizance for the offence under Sections 448, 427 and 379 of IPC.

12. After registration of the settlement deed dated 01.12.1999, within a period of 3 years the settlor namely the father of the respondent filed a suit in O.S.No.79 of 2002 for declaration declaring the settlement deed as null and void and also prayed for injunction. While pending suit the settlor cancelled the settlement deed by way of cancellation deed dated 07.03.2002. Thereafter, after a period of 12 years his father executed a settlement deed in favour of the respondent/complainant on 24.07.2014.

13. As stated supra the second accused is in possession and enjoyment of the property which is dealt with the first accused. However while dismissing the suit on 10.11.2025 in O.S.No.79 of 2002 the Trial Court observed as follows:



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9.6 The settlement deed (Ex.A4/Ex.B8) does not contain any clause or reservation imposing an obligation upon D1 and D2 to maintain P1 during his lifetime. There is also no stipulation in the deed indicating that P1 retained any right to revoke the settlement in the event of neglect or ill-treatment. Furthermore, it is not even the case of the plaintiffs that P1 was, in fact, neglected or ill-treated by D2, or that such alleged conduct compelled him to revoke or even express an intention to revoke the settlement deed executed in favour of D1.

9.7 If P1 had truly experienced any form of neglect or had any genuine intention to cancel the settlement deed on such grounds, it would have been natural for him to come forward and give evidence before the Court to substantiate the same. However, P1 chose not to step into the witness box at any point of time, thereby depriving the Court of any direct testimony from the very person who executed the deed. This omission significantly undermines the credibility of the plaintiff's version and casts serious doubt on the veracity of their allegations.

9.8. Moreover, the plaintiffs have also failed to include any specific pleading regarding this aspect-namely, that P1 was not maintained or was driven to revoke the settlement on account of ill-treatment. The absence of such a foundational plea further weakens their case, as pleadings form the basis upon which evidence must rest. In the absence of both proper pleading and supporting evidence, the plaintiffs' claim lacks legal and factual substantiation.

14. Therefore, the settlement deed was not executed by any coercion, undue influence and misrepresentation and it was executed with full



consciousness and the possession of the settlement deed was also handed over in favour of the second accused. Therefore, no offence is made out as against the second accused as alleged by the respondent. Hence, the entire complaint is nothing and it is a clear abuse of process of law.

15. For the foregoing reasons this petition is allowed and CC.No.47 of 2022 on the file of the Judicial Magistrate No.I, Kancheepuram is quashed. Consequently connected miscellaneous petitions are closed. **It is made clear that if the respondent prefers any appeal against the order passed by the Principal Subordinate Court, Kancheepuram in O.S.No.79 of 2002 on 10.11.2025 the Appellate Court is directed to dispose of the appeal without influencing any of the observations made in this order.**

09-03-2026

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

To.

The Judicial Magistrate No.I, Kancheepuram



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G.K.ILANTHIRAIYAN J.
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